BellSouth
May 16, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF BELLSOUTH

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SUMMARY

The Commission's current track of pursuing and imposing detailed uniform national standards conflicts with the primary goals and purposes of the 1996 Act; to increase competition and to reduce regulatory burdens. BellSouth believes that the Commission should adopt explicit national rules only in those situations where a uniform, national approach is absolutely essential to the development of competition. Thus, the scope of the Commission's regulations should be as narrow as the circumstances permit and should not interfere with the carrier-to-carrier negotiation process created under the Act.

In the Notice, the Commission proposes to specifically delineate technically feasible points of interconnection. The concept of technical feasibility necessarily must remain flexible to accommodate differences in technology both within an incumbent LEC's network and among LEC networks, as well as accommodate advances in network technology. As has been done in a number of states in BellSouth's region, the Commission must take a flexible approach to defining network feasibility.

Similarly, the Commission should not adopt national guidelines or standards regarding the terms and conditions of interconnection or access to unbundled network elements. There is simply no reason to do so. Federal and state statutes and regulation have long been in place that require LECs to provide service under terms that are just, reasonable and nondiscriminatory. Moreover, the 1996 Act imposes specific obligations on LECs to make any interconnection provided under negotiated agreement available to other requesting telecommunications carriers. Likewise, Congress intended that the

parties negotiate for access to unbundled network elements in the first instance, with recourse to state arbitration processes if agreement cannot be reached. Adoption of national standards would thwart the clear mandate from Congress for negotiated agreements.

The Commission must bear in mind that whatever authority the Commission may have under the Act, it can only be exercised in furtherance of the goals of the Act. The Commission must not act in a way that would displace genuine negotiations or curb the prerogatives given the states under the Act. Keeping these precepts in mind, Commission mandated pricing rules would not only obviate negotiations but also render the state commission's role under Section 252 (d)(1) inconsequential.

There should be flexibility in setting the price for interconnection and unbundled elements. Contrary to the view of some, the Act does not impose a rigid formula on price setting but rather requires prices to reflect costs. The term cost means total cost, including joint and common costs and a reasonable profit.

BellSouth views Federal rules and principles concerning rate structures as unnecessary. This is not the correct place for a one-size-fits-all approach. As BellSouth shows, the kind of rules the Commission is contemplating would serve to stifle negotiations and chill innovation both in terms of the types of agreements reached and elements offered.

The primary purpose of Section 251 is to establish a framework for local competition. It is clear that Congress did not intend for interconnection under Section 251 to supplant the access charge regimes of the Commission or the states. BellSouth

disagrees with the Commission's tentative conclusions that Section 251(c)(3) permits interexchange carriers to request unbundled network elements for purposes of originating and terminating interexchange toll traffic. Section 251(c)(3) must be read in context with Section 251(g) and 251(i) which preserve the Commission's access charge regime and the requirements of Section 201.

Recognizing the variation in local conditions Congress provided for state commissions to play an active role in the implementation of Section 251. One such area is resale of local services. The state commissions are in the best position to determine whether resale restrictions are reasonable and nondiscriminatory. Similarly, the Act calls upon the state commissions to determine wholesale rates for resold services. Nothing in the Act requires or indeed suggests that the Commission can or should prescribe rules regarding these provisions of the Act. The statutory standard for states to apply in determining rates is clear: retail rates less avoided costs.

There is also no need for the Commission to intervene in the statutory process for negotiating reciprocal compensation arrangements. Mandatory bill and keep arrangements are unquestionably inconsistent with the plain language of the Act. The Act requires that mutual compensation be based on each carrier's costs to transport and terminate interconnected traffic. Bill-and-keep arrangements do not satisfy this essential predicate of the Act. Any attempt by any commission to mandate bill-and-keep would constitute an unlawful taking in violation of the Takings Clause of the Fifth Amendment of the Constitution.

Finally, the Commission can best encourage the deployment and development of advanced telecommunications capabilities as set forth in Section 706(a) of the Act by permitting carriers the freedom to negotiate efficient and mutually acceptable interconnection arrangements without imposing unnecessary restrictions of the negotiation process.

The Commission should view its role in implementing Sections 251 and 252 as a support role. It is in this way that the Commission will facilitate the negotiation process for which Congress expressed a clear preference.

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BellSouth Corporation, BellSouth Enterprises, Inc. and BellSouth Telecommunications, Inc. (collectively"BellSouth") hereby comment on the issues identified in the Notice of Proposed Rulemaking ("Notice"), FCC 96-182, released April 19, 1996.

I. INTRODUCTION

In adopting Sections 251-252 of the Telecommunications Act of 1996 ("1996 Act or Act")[1], the Congress clearly intended to create a new "pro-competitive, de-regulatory, national policy framework" for the provision of local exchange and exchange access services.[2] Sections 251-252 facilitate the introduction of facilities based competition for these services by parties other than the incumbent local exchange carriers ("LECs").

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1 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). All citations to the Act are consistent with the Notice and reference the Section numbers as they will be codified under Title 47 of the United States Code.

2 H. R. Conf. Rep. No. 458, 104th Cong. 2d Sess. Joint Explanatory Statement at 1.

Congress envisioned competing, fully interconnected facilities-based local exchange networks. In order to facilitate rapid entry by new competitors, Congress also mandated that the retail services offered to end users by incumbent LECs would be made available at wholesale rates for resale by their new rivals. [3]

With respect to the terms and conditions for local interconnection, the new statutory framework relies, in the first instance, on good faith negotiations between the incumbent LECs and the new entrants.[4] Only if those negotiations are unsuccessful does the government become an active arbitrator, and that role is delegated initially to state regulators.[5] Any interconnection agreement adopted by negotiation or by arbitration shall be submitted to the state commission for approval.[6] This Commission has two primary areas of responsibility under Sections 251-252. First, the Commission is charged with completing all actions necessary to establish regulations to implement the requirements of Section 251 by August 8, 1996.[7] In addition, if a state fails to act to carry out its responsibilities under the 1996 Act, the FCC shall assume the responsibilities of the state commission.[8] Thus, while the Congress certainly intended that this Commission have an active role in the implementation of Sections 251-252, that role should be to support and facilitate the negotiation process, not to supplant it.

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3 1996 Act, sec. 101, § 251(c)(4)(A); Notice, ¶ 15.

4 1996 Act, sec. 101, § 252(a).

5 1996 Act, sec. 101, § 252(b).

6 1996 Act, sec. 101, § 252(e).

7 1996 Act, sec. 101, § 251(d)(1); Notice, ¶ 25.

8 1996 Act, sec. 101, § 252(e)(5).

That the Commission should view its role as a support role is important not just as a matter of policy, but as a matter of practicality. With the passage of the 1996 Act, parties interested in entering local exchange and exchange access markets have requested negotiations, and those negotiations are actively under way. This Commission issued its Notice on April 19, 1996, more than two months after the 1996 Act became effective. The Notice raises almost 400 issues, yet the time allowed for comment was less than thirty days.[9] Even if the Commission is able to resolve these many issues by August 8, 1996, many of the negotiations will be over or the arbitration process, if needed, will be well underway.[10] If the Commission insists on imposing detailed, uniform national standards at that time, the ironic effect will be that the Commission will have undermined the primary goal of the 1996 Act--the speedy implementation of local exchange and exchange access competition pursuant to negotiated interconnection agreements.[11]

In dealing with the cable television portions of the 1996 Act, the Commission took a very pragmatic approach: it simply codified the statutory language when that language was self-effectuating, and asked for comment on only those issues where the Commission was required by the statute to make a policy determination.[12] The Commission should

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[9] Despite the tremendous number of issues identified in the Notice and the extreme complexity of some of those issues, no specific rules were proposed in the Notice. Therefore, none of the parties has been afforded an opportunity to comment on specific rule language.

[10] 1996 Act, sec. 101, § 252(b).

[11] The Commission recognizes the potential for its rules to influence the outcome of negotiations in Paragraph 20 of the Notice.

[12] Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, CS Docket No. 96-85, Order and Notice of Proposed Rulemaking, released April 9, 1996.

consider following the same approach in this proceeding. For example, the 1996 Act requires incumbent LECs to provide to a requesting telecommunications carrier "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point . . ."[13] If the Commission simply codifies the statutory standard, in the event of a dispute it (or the state commission) will determine "technical feasibility" based on a concrete factual record on that issue. On the other hand, if the Commission attempts to codify presumptions that satisfy statutory standards, it creates further areas of potential dispute. For example, the Notice tentatively concludes that "the unbundling of a particular network element by one LEC (for any carrier) evidences the technical feasibility of providing the same or a similar element on an unbundled basis in another, similarly structured LEC network."[14] Were the Commission to adopt this standard, the party arbitrating the dispute must decide: 1) the degree of similarity between the network elements being requested and that provided by another LEC; and 2) the degree of similarity in the networks of the two LECs, *before* it gets to the statutory issue of "technical feasibility". The indirect approach of creating rebuttable presumptions in the rules would appear to be far more cumbersome than a direct approach of applying the statutory language as written.

BellSouth therefore recommends that the Commission simply codify the statutory language in those situations where that language is self-effectuating. This will provide the greatest clarity to the parties currently engaged in negotiations based on the statutory

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13 1996 Act, sec. 101, § 251(c)(3).

14 Notice, ¶ 87.

language, and will minimize the chance of later disputes that undo completed negotiations. In these comments, BellSouth will identify those instances in which it appears that the statutory language can be codified without further elaboration in the rules.

As requested in the Notice, BellSouth has organized these comments to coincide with the identification of the issues in the Notice.[15] Due to the page limitation, BellSouth will not restate the issue as to which comment is sought except where needed for clarity, but will identify its response to the issues with a reference to the paragraph number in the Notice where the issue is identified.

II. SECTION 251

A. Scope of the Commission's Regulations

BellSouth believes that the Commission should adopt explicit national rules only in those situations where a uniform, national approach is absolutely essential to the development of competition.[16] Section 251 establishes standards for local interconnection for the provision of telephone exchange and exchange access services. Some variation in outcomes to reflect varying local conditions should not be viewed as antithetical to the effective introduction of local competition. BellSouth believes that the degree of concern expressed in the Notice regarding possible variations in the outcome of the negotiation process is overstated.[17] Some of the initial requests for negotiations under Section 251

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[15] In addition, BellSouth is submitting as Attachment 1 a paper entitled Interconnection and Economic Efficiency, prepared by Jeffery H. Rohlfs, John Haring, Calvin S. Monson and Harry M. Shooshan of Strategic Policy Research (hereinafter "SPR").

[16] Notice, ¶ 27.

[17] Notice, ¶ 30.

have come from large interconnectors with a nationwide presence, such as AT&T and MFS. These parties are negotiating for interconnection agreements that can be implemented uniformly company wide. Assuming good faith negotiations by both sides, it is unlikely that conditions that would require expensive network modifications by either side will receive mutual agreement. It is also speculative to assume that an arbitrator or a state commission will insist on a solution that requires one or the other parties to incur substantial uneconomic costs. To the extent that there are local variations that are mutually acceptable to the parties, the Commission should not adopt national standards that preclude such variations.

BellSouth disagrees with the Commission's perception that it needs to narrow the range of possible outcomes due to unequal bargaining power.[18] To assume that incumbent LECs possess superior bargaining power to an AT&T is totally unwarranted. The ability of smaller interconnectors to obtain the same interconnection agreement negotiated by an AT&T also serves to mitigate any perceived unequal bargaining power.[19] To the extent that a smaller interconnector wants interconnection arrangements tailored to local conditions, the requirement that both sides bargain in good faith is sufficient to protect such an interconnector. Indeed, adoption by the Commission of rigid national standards that do not consider the particular needs of a small interconnector could damage competition rather than promote it.

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18 Notice, ¶ 31.

19 1996 Act, sec. 101, § 252(i).

Moreover, any leverage in the negotiating process that the Commission may perceive a LEC possesses is mitigated by the knowledge that a state commission stands in the wings as a third party arbitrator. It is in the interest of all negotiating parties who are most cognizant of their own business needs and plans to reach an accord consistent with those plans, rather than to leave those matters to a regulator.

The Commission's assertion that explicit national standards are required to implement the checklist requirements of Section 271[20] is also troublesome. The Commission should recognize that it is in the interest of the Bell Operating Companies ("BOCs") to negotiate interconnection agreements that meet the checklist requirements of Section 271. The Commission should **NOT** adopt a set of detailed rules that introduce requirements that go beyond the statutory language in Section 251 and Section 271. BellSouth's compliance with the Section 271 checklist should be evaluated based on statutory language, not additional, detailed rules adopted after negotiations are completed.

While BellSouth believes that the Commission should not adopt detailed national standards that have the effect of foreclosing good faith negotiations between the parties, BellSouth shares the Commission's concern that there should be a uniform framework to evaluate BOC statements of generally available terms and conditions, as well as arrangements arrived at through compulsory arbitration.[21] Where there have been no negotiations, or the parties have failed to reach agreement, the 1996 Act requires that the arbitrator apply the standards of Section 251, "including the regulations prescribed by the

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20 Notice, ¶ 32.

21 Notice, ¶ 36.

Commission pursuant to Section 251."[22] In BellSouth's view, however, this provision should not be read as an invitation by Congress to adopt an overly regulatory approach. The intent of the Congress was to regulate only to the extent required, and the Commission should approach this rulemaking with that overarching Congressional goal in mind. Therefore, BellSouth recommends that the Commission adopt a statement of principles rather than detailed standards for the review of BOC statements of generally available terms and conditions and for arbitrated agreements under Section 252(b).

BellSouth agrees with the Commission that Sections 251-252 apply to both the interstate and intrastate aspects of interconnection.[23] It makes no sense to interpret the 1996 Act as requiring separate interconnection arrangements for interstate and intrastate communications. Congress delineated roles for both the Commission and the state commissions implementing Sections 251-252, but nothing in the statute or the legislative history suggests that Congress intended that interconnection be "jurisdictionally" separated.[24] BellSouth also agrees with the Commission's conclusion that Sections 251-252 do not alter the jurisdictional division of authority with respect to matters falling outside the scope of these provisions. Congress did not amend Section 2(b) of the Communications Act of 1934, which reserves to the states jurisdiction over intrastate

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22 1996 Act, sec. 101, § 252(c)(1).

23 Notice, ¶ 37.

24 Notice, ¶¶ 38-39.

telecommunications. Where Congress intended to alter the jurisdiction of the Commission and the states, it did so explicitly.[25]

Sections 251-252 negotiations will result in contracts between carriers that can be enforced like any other contract.[26] The Communications Act of 1934 explicitly recognized the right of carriers to enter into intercarrier contracts. See, e.g., Section 201 and Section 211. If one party to the agreement claims a breach of contract, such a claim can be prosecuted in any court of competent jurisdiction. If the claim is that the action of the other party violates obligations created by the Communications Act, Section 207 gives the party injured thereby a choice of forums: a complaint before the Commission or a suit in a United States District Court of competent jurisdiction, but not both. As a practical matter, however, even if suit is filed in federal court, if the issue involves an interpretation of the Communications Act, the federal court will frequently refer the matter to the Commission under the doctrine of "primary jurisdiction." See, e.g., Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 1250 (C.A. 3rd, 1974). Thus, the role of the Commission may be to adjudicate the claim directly, or to provide its expertise to the court following a referral. Nothing in Sections 251-252 would appear to divest the Commission of jurisdiction to hear complaints under Sections 207-208, provided the complaint alleges a violation of the Communications Act.

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[25] See, e.g., 1996 Act, § 276(c), which expressly preempts any state requirements that are inconsistent with the Commission's regulations implementing the 1996 Act's provisions dealing with public payphone service.

[26] Notice, ¶ 41.

B. Obligations Imposed by Section 251(c) on "Incumbent LECs"

The criteria for treating a "comparable carrier" as an "incumbent LEC" are set forth in Section 251(h)(2) of the 1996 Act. BellSouth does not believe that the Commission needs to further refine those criteria at this time.[27] Nothing in the 1996 Act purports to preempt the traditional right of a state commission to impose obligations on carriers providing intrastate telecommunications services, including LECs, where such obligations are deemed necessary to protect the public interest.[28] In the example given in the Notice, if a state commission finds that the public interest requires that all carriers meet certain reciprocal obligations, such as exchanging directory assistance information, nothing in the 1996 Act would preclude the imposition of such obligations as a matter of state policy.[29] As discussed more fully below, such issues are reserved to the state commissions under Section 251(d)(3) of the 1996 Act.

1. Duty to Negotiate in Good Faith

BellSouth believes that the Commission should not attempt to codify what does or does not constitute negotiating in "good faith". If a party proposes items in negotiations that the other party deems unacceptable, the 1996 Act provides for mediation, binding arbitration, and ultimately judicial review. Only the declaration of an item as a "condition precedent" to negotiations, i.e., a refusal to negotiate other items in the absence of an

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27 Notice, ¶ 44.

28 Notice, ¶ 45.

29 Notice, ¶ 45.

agreement on a particular issue, should be deemed a refusal to negotiate in good faith. The Commission cannot and should not attempt to prejudge whether particular negotiating positions are being taken in "good faith". So long as the parties are willing to continue negotiations on other issues and defer the issue in dispute to arbitration, neither party has refused to negotiate in good faith.

If the Commission decides that it must attempt to define the parameters of "good faith" negotiating positions, it should include only those areas which are required to be negotiated under the 1996 Act. A party that refuses to negotiate on an item covered by the 1996 Act, or who insists on negotiating an issue not required to be negotiated under the 1996 Act is not negotiating in good faith. For example, some IXCs have insisted on negotiating the rates, terms and conditions of access charges, despite the provision of Section 251(g), which states that the Commission's regulations in this areas are to remain in effect until "explicitly superseded by regulations prescribed by the Commission . . . ."[30] An incumbent LEC's refusal to negotiate over issues that are beyond the scope of Sections 251-252 and, for negotiations involving BOCs, Section 271, cannot be deemed a failure to negotiate in good faith.

Section 252 has no relevance to agreements negotiated prior to the passage of the 1996 Act.[31] Until an incumbent LEC receives "a request for interconnection, services, or network elements pursuant to Section 251"[32], Section 252 remains dormant. However, if either party to an agreement entered into prior to the effective date of the 1996 Act

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30 1996 Act, sec. 101, § 251(g).

31 Notice, ¶ 48.

32 1996 Act, sec. 101, § 252(a)(1).

requests negotiations pursuant to Section 251, and such negotiations result in an amendment to the preexisting agreement, that new agreement "including any interconnection agreement negotiated before the date of enactment" of the 1996 Act, shall be submitted to the state commission.[33] Nothing in the 1996 Act requires the submission to the state commissions of the myriad of preexisting contracts in the absence of a request for renegotiation of those agreements pursuant to Section 251.

2. Interconnection, Collocation, and Unbundled Elements

a. Interconnection

Section 251(c)(2) imposes upon incumbent LECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." Such interconnection must be (1) provided "at any technically feasible point" within the LEC's network; (2) at least "equal in quality" to that provided to itself or to any other party to whom the LEC provides such interconnection; and (3) provided on rates, terms, and conditions that are just, reasonable and nondiscriminatory in accordance with the agreement and the requirements of this Section and Section 252.

Citing a perception that "national standards" would speed the negotiation process "by eliminating potential areas of dispute", the Commission tentatively concludes that "uniform interconnection rules" to effectuate the statutory requirements "would facilitate

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[33] 1996 Act, sec. 101, § 252(a)(1).

entry by competitors in multiple states."[34] BellSouth believes that the premise of the Commission's proposal is neither correct nor authorized by the Act and that the Commission's tentative conclusion is therefore misdirected.

As discussed above, the clear preference under the Act is for parties to negotiate interconnection arrangements, with fallback to state arbitration proceedings in the event of impasse. Any attempt by the Commission to "eliminate potential areas of dispute" would operate to deprive parties of their legitimate opportunity to negotiate those items in the first instance, and of their right to have those items arbitrated in the second instance.[35] Indeed, by contemplating adoption of national standards through a rulemaking proceeding, the Commission effectively is skipping the negotiation process and preemptively arbitrating the "potential" areas of dispute before they even arise through the negotiation process. Such an approach would gut the Act of its operation as intended by Congress.

Nor would national interconnection rules necessarily speed the negotiation process or the development of competition. The Act clearly contemplates that parties may negotiate agreements on terms that differ from the requirements of the Act and any regulations adopted thereunder. Thus, parties would not be bound to begin negotiations with the "national standards," and in fact many requesting carriers may be expected not to do so.[36] To the extent either party desires terms that differ from the "national standards,"

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[34] Notice, ¶ 50.

[35] It seems readily intuitive that if Congress had intended the Commission to enact rules to eliminate in advance "potential areas of dispute," it would not have enacted such an extensive scheme for negotiation, mediation, arbitration, and judicial review.

[36] The Commission acknowledges in the Notice that technical, demographic, and geographic conditions vary from state to state. Notice, ¶ 51. Hence, specific national standards could not be expected to reflect prevailing conditions in many locations. Either

the "potential for dispute" continues to exist. The fact that "national standards" exist would have little bearing on resolution of that dispute through good faith negotiations.[37]

If the Commission nevertheless pursues adoption of national standards, it should strive to ensure that they are as non-intrusive on the negotiation process as possible. Rather than being outcome-determinative and thereby obviating the opportunity for meaningful negotiation, any standards should stand simply as guidelines or principles. To the extent the Commission deems it necessary to use such principles to guide the negotiation process, it should establish the guidelines as aspirational objectives rather than mandatory minimums and should provide incentives to meet those standards. For example, under such an approach, BOCs who agree through negotiation to meet these standards could receive streamlined review of applications for authorization to provide interLATA service under Section 271(d). Of course, no negative presumption should attach to agreements between parties who negotiate terms that differ from the national guidelines.

The Commission also questions whether there is an overlap in scope between interconnection and transport and termination.[38] BellSouth believes that there is no overlap between the term interconnection as used in Section 251(c)(2) and the transport

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party may find it advantageous in those areas to negotiate for terms that differ from the national standard and would not be acting in bad faith by doing so.

[37] Nor are "explicit guidelines" necessary to enable states to carry out their arbitration responsibilities under the Act. In fact, states would likely be better able to resolve issues presented to them in the context of prevailing local conditions and the interests of the parties before them than if implicitly obligated to factor a set of national guidelines into the process.

[38] Notice, ¶¶ 53-54.

and termination services covered by Section 251(d)(2) of the Act. Interconnection pertains only to the facilities and equipment that are used to physically link two networks. From the point of interconnection back into a carrier's network are transport and termination services to which reciprocal compensation applies. The Commission would be ill advised to accept arguments that would introduce an ambiguity into the Act through a definitional approach that would overlap two very distinct aspects of the Act, each with its own pricing standard.

(1) Technically Feasible Points of Interconnection

Given the requirement of Section 251(c)(2)(B) that interconnection be provided at "any technically feasible point" in the incumbent LEC's network, the Commission solicits comment on the meaning of that phrase, including the appropriate degree of flexibility that should be recognized in whatever definition is applied. The Commission also requests comment on the extent to which one LEC's provision of interconnection at a particular point should be considered conclusive evidence of technical feasibility, the extent to which potential network harm is a relevant consideration and whether a party asserting such harm carries a particular burden of supporting that claim, and whether the burden will always rest with the incumbent LEC to demonstrate that interconnection at a particular point is not feasible. Finally, the Commission requests comment on experiences and requirements in the states regarding identification of technically feasible points of interconnection.[39]

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[39] Notice, ¶¶ 56-59.

That the Commission stopped short of attempting to identify an exhaustive list of interconnection points as the means of defining technically feasible points is encouraging to BellSouth. It reflects a tacit recognition that the concept of technical feasibility necessarily must remain flexible to accommodate differences in technology both within an incumbent LEC's network and among LEC's networks, as well as to accommodate advances in network technology evolution.

This notion is significant because it accepts that there may be differences between interconnection that is technically feasible in theory and that which is technically feasible in practice.[40] This approach thus leaves to the technical experts of the negotiating parties the responsibility of agreeing on the basis of accepted industry technical and operational standards whether a requested interconnection point is feasible as a practical matter and whether alternative theoretically feasible, but untested, arrangements still might be pursued.

A flexible approach to defining technical feasibility also operates against a rigid presumption that a single LEC's current or past interconnection arrangements are determinative of what is technically feasible for other LECs with "similar network

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[40] The Commission has only recently recognized the difference between feasibility in theory and feasibility in practice, in Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Third Report and Order released April 5, 1996. There, while imposing an obligation on LECs to provide a certain function where technically feasible, the Commission equated "feasibility" with "capability". Thus, the Commission stated: "We . . . require the LECs to offer their . . . service . . . where technically *feasible* and economically reasonable. In some instances the technical *capability* to provide [the service] does not currently exist. For example, some central offices may not have the technical *capability* to provide [the service]. Where LECs replace switches in the normal course of their investment programs, it may then be 'technically *feasible* and economically reasonable' for LECs to provide this . . . service." Id. at para. 8 (emphasis added).